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The European Court of Human Rights and Domestic Violence: *Valiuliene v Lithuania*.

Abstract.

This article analyses the recent jurisprudence of the European Court of Human Rights on the issue of domestic violence, with a particular focus on *Valiuliene v Lithuania*. It seems that to date the Court's jurisprudence on this issue is somewhat inconsistent, and with *Valiuliene v Lithuania* the Court was given an opportunity to clarify its approach in this area. There are certainly a number of positive aspects to the Court's judgment, however there are also difficulties with the approach of the Court in this case. Overall it is to be hoped that the judgment in *Valiuliene v Lithuania* will mark the beginning of a more coherent jurisprudence as regards domestic violence.

Keywords.

Domestic violence; European Convention on Human Rights; Article 3; Article 8; European Court of Human Rights; *Valiuliene v Lithuania*.

With the case of *Valiuliene v Lithuania*,¹ the European Court of Human Rights once again added to its increasing corpus of jurisprudence on the subject of domestic violence. The recent spate of cases on domestic violence which have been considered by the European Court is remarkable, given that it was not until 2007 that domestic violence was addressed substantively by the Court. Indeed, in the last seven years the issue of domestic violence has been addressed at regular intervals, and violations of Articles 2, 3, 8 and 14 have been found in various cases involving violence against women taking place in the home. Whilst this consideration of domestic violence by the European Court is to be welcomed, it seems that the Court's jurisprudence in this area is somewhat incoherent. With the case of *Valiuliene v Lithuania*, the Court was provided with an opportunity to clarify its approach to the issue of domestic violence, an opportunity of which it did not fully take advantage. It should be noted that the focus of the analysis in this article is on the use of Articles 3 and 8 in domestic violence cases, and that the use of Article 14 in such cases is not examined.

The facts of *Valiuliene v Lithuania*.

In *Valiuliene v Lithuania* the applicant argued that the State had failed to protect her sufficiently from domestic violence, and that the criminal proceedings she had instituted against her abuser had been futile. Between 3 January and 4 February 2001, the applicant had been beaten on five occasions by her partner J.H.L. with whom she had been living at the time. She alleged that she had been strangled, pulled by the hair, hit in

the face and kicked in the back and in other parts of her body. On each occasion, forensic expert examinations had concluded that the injuries sustained by the applicant were minor and had not caused any health problems in the short or long term.

On 14 February 2001 the applicant lodged an application with the City District Court to bring a private prosecution against J.H.L. In her application she alleged that the acts of violence against her constituted the offence of causing minor bodily harm under Article 116 of the Criminal Code which was then in force in Lithuania. The applicant provided a list containing the names and addresses of individuals whom she wished to call as witnesses, and also medical reports concerning her injuries. In addition, the applicant requested that the City District Court provide her with evidence from the city police about the violence to which she had been subjected. In January 2002 the City District Court forwarded the applicant's complaint to the city public prosecutor, ordering him to start his own pre-trial criminal investigation. The reason given by the City District Court for the request for a public prosecution was that J.H.L. had failed to appear in court on a number of occasions. J.H.L. was subsequently charged with having deliberately and systematically injured the applicant, resulting in her having sustained minor bodily harm. However, the investigation was suspended and reopened on numerous occasions due to J.H.L. failing to appear in court. The applicant lodged an appeal each time the investigation was suspended. On two occasions the police investigator made the decision to discontinue the pre-trial investigation, on the basis that there was insufficient evidence to prove that J.H.L. had perpetrated the crimes against the applicant. The first of these decisions was quashed by the prosecutor on the ground that the pre-trial investigation had not been sufficiently thorough. However, the second decision to discontinue the pre-trial investigation was upheld by a public prosecutor in February 2003. The applicant appealed against this decision in February 2004 and the proceedings were again reopened.

In June 2005 the prosecutor held that it had been established during the pre-trial investigation that the applicant had been strangled, hit and kicked on five occasions between January and February 2001, as a result of which she had sustained minor bodily harm. The prosecutor also stated that J.H.L. was suspected of having perpetrated the acts in question. However, the prosecutor nevertheless decided to discontinue the pre-trial investigation on the grounds that the law had changed in May 2003. Under Article 407 of the new Code of Criminal Procedure, criminal proceedings for offences such as causing minor bodily harm may only be opened upon a complaint by the victim. If the victim lodges such a complaint, under Article 408 he or she becomes the private prosecutor. It was therefore held that the prosecution should have been brought by the applicant in a private capacity. Under Article 409 of the new Code of Criminal Procedure, the public prosecutor has a right to open a criminal investigation into offences

usually investigated by means of private prosecution, such as the offence of causing minor bodily harm, if the crime is of public importance or if there are important reasons as to why the victim is unable to protect his or her rights. However, the prosecutor in the case in question held that there was no reason for a public prosecution as he did not consider the crime to be 'of public importance' for the purposes of Article 409 of the Code. It was therefore up to the applicant to apply to bring a private prosecution against J.H.L.

The applicant appealed against this decision, pointing out that she had in fact initiated a private prosecution four years previously, however the City District Court had transferred her complaint to a public prosecutor, who had initiated the pre-trial investigation. This investigation had continued after May 2003, when the new Code of Criminal Procedure had entered into force, therefore the applicant had been led to believe that the charges in the case were being pursued by the public prosecutor. The applicant argued that if the prosecutor had deemed that her case should be dealt with by means of a private prosecution, he should have informed her of this immediately after the new legislation had entered into force in May 2003, instead of waiting for two years to inform her of his decision. This delay was particularly problematic as the end of the limitation period for prosecuting J.H.L. was fast approaching. However the applicant's appeal was dismissed.

The applicant subsequently attempted to bring a private prosecution against J.H.L. She lodged a complaint describing the five episodes of violence which had taken place between January and February 2001 and requesting that J.H.L. be prosecuted for causing minor bodily harm. However her request was ultimately refused on the basis that the prosecution had now become time-barred.

The case before the European Court of Human Rights.

Following the failure of her attempts to have J.H.L. prosecuted under domestic law, the applicant then brought a case to the European Court of Human Rights. Initially relying on Article 6 of the European Convention on Human Rights, the right to a fair trial, and Article 13 of the Convention, the right to an effective remedy, she argued that the national authorities had failed to investigate the acts of domestic violence against her and to hold J.H.L. accountable. She also alleged that the criminal proceedings had been excessively lengthy. The European Court found however that the appropriate Articles to be relied upon in this instance were in fact Article 3, the right to be free from torture and inhuman or degrading treatment or punishment, and Article 8, the right to respect for private and family life.

In response, the State asserted that the treatment to which the applicant had been subjected had not attained the minimum level of severity to fall within the scope of Article 3 of the European Convention. The State argued that as the applicant had sustained minor bodily harm that had not resulted in short or long term health problems, 'it could be said that the injuries sustained by the applicant had been of a merely trivial nature'.² The State was of the view that responses to the ill-treatment other than that of relying on the criminal law could have been utilised by the applicant, such as approaching a women's crisis centre or a family support centre. The applicant could also have brought a claim for compensation against J.H.L. using civil law mechanisms. The State argued therefore that any obligations as regards the complaints of the applicant fell to be dealt with under Article 8 only.

The State did however acknowledge that the investigation of the applicant's complaints had lasted too long and that this had resulted in the case ultimately becoming time-barred. It also admitted that 'it was regrettable that the case had not been fully and efficiently investigated and the perpetrator of the alleged crime had not been convicted.'³ The State therefore presented the European Court with a unilateral declaration on 1 September 2011, acknowledging a breach of Article 8 of the Convention. Very interestingly however, on 5 June 2012 the Court decided not to accept this declaration.

The judgment of the Court.

On 26 March 2013 the European Court of Human Rights issued its decision in *Valiuliene v Lithuania*. The first point which the Court addressed in its judgment was the State's assertion that the applicant's complaints did not fall to be considered under Article 3 of the Convention due to the 'trivial nature' of the injuries which had been sustained. The Court reiterated that ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3. However, 'The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.'⁴ The Court proceeded to state that,

Treatment has been held...to be 'inhuman' because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering...Treatment has been considered 'degrading' when it was such as to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them and possibly breaking their physical or moral resistance.⁵

Applying these standards to the facts of the case in question, the Court noted the physical violence suffered by the applicant, as a result of which she had sustained

hypodermic bruising on the left hip and thigh, a scrape on the right cheek and brachium, bruising on the right eye and cheek, the left temple and the shin, a scrape on the left shin and hypodermic bruising on her face. The Court also observed that the five incidents of violence had occurred over a one month time period. In the Court's view, the five instances therefore constituted a continuing situation, which it regarded as being an aggravating circumstance. The Court also stated that it could not 'turn a blind eye to the psychological aspect of the alleged ill-treatment.'⁶ The applicant had made credible assertions that she had been exposed to threats to her physical integrity over a certain period of time and that she had in fact been attacked on five occasions. In this regard, the Court acknowledged that 'psychological impact is an important aspect of the domestic violence.'⁷ The Court therefore considered that,

the ill-treatment of the applicant, which on five occasions caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious to reach the level of severity under Article 3 of the Convention and thus raise the Government's positive obligation under this provision.⁸

The applicant's complaints were thus declared to be admissible under Article 3 of the Convention. In addition, the Court considered that, as the applicant's complaint under Article 8 was based on the same facts, it must also be declared admissible.

Having found that the level of severity of the ill-treatment suffered by the applicant reached the threshold for the applicability of Article 3, the Court then proceeded to analyse the adequacy of the response by the State. The judgment asserted that,

Once the Court has found that the level of severity of violence inflicted by private individuals attracts protection under Article 3 of the Convention, its case-law is consistent and clear to the effect that this Article requires the implementation of adequate criminal-law mechanisms.⁹

The Court then reiterated its oft-cited principle that

the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.¹⁰

Accordingly, 'Article 3 requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions'.¹¹ The Court went on to assert that, 'In order that a State may be held responsible it must...be shown that the domestic legal system, and in particular the

criminal law applicable in the circumstances of the case, failed to provide practical and effective protection of the rights guaranteed by Article 3.’¹²

In applying these principles to the facts of the case in question, the Court professed itself to be satisfied that the national law of Lithuania provided a sufficient regulatory framework to pursue the crimes alleged to have been committed by J.H.L. against the applicant. However, it concluded that the national law had not been implemented in a manner sufficient to protect the rights of the applicant. Once the case had been transferred for public prosecution, the investigation was then suspended twice for lack of evidence. On each occasion, upon the persistent appeals of the applicant, the investigator’s decisions were quashed due to the investigations being insufficiently thorough. The Court found this to be ‘a serious flaw on the part of the State.’¹³ According to the Court, ‘the choice of the means to secure compliance with Article 3 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the domestic authorities’ margin of appreciation, provided that criminal-law mechanisms are available to the victim.’¹⁴ In the Court’s view, it was not therefore appropriate for it to speculate on the question of whether the applicant’s criminal complaint should have been pursued by the public prosecutor or by way of a private prosecution. Nevertheless, the fact remained that ‘the circumstances of the case were never established by a competent court of law.’¹⁵ The Court noted that one of the purposes of imposing criminal sanctions was to deter the offender from causing further harm, however this aim could not be achieved without having the facts of the case established by a criminal court. The European Court thus stated that it could not

accept that the purpose of effective protection against acts of ill-treatment is achieved where the criminal proceedings are discontinued owing to the fact that the prosecution has become time-barred and where this has occurred...as a result of the flaws in the actions of the relevant State authorities.¹⁶

It was therefore concluded by the Court that, ‘the practices at issue in the present case, together with the manner in which the criminal-law mechanisms were implemented, did not provide adequate protection to the applicant against acts of violence’, and that there had thus been a violation of Article 3 of the Convention.¹⁷ The Court stated that, having found a breach of Article 3, it was not necessary to examine the complaint separately under Article 8. The applicant had claimed 20,000 euro in respect of non-pecuniary damage, however the Court viewed this amount as excessive and instead awarded the applicant 5,000 euro.

Positive developments.

The decision of the European Court of Human Rights in *Valiuliene v Lithuania* is to be commended on a number of levels. Firstly, the judgment adds to the Court’s

increasing corpus of jurisprudence on the issue of domestic violence and serves to reinforce the fact that it has now been established beyond doubt that domestic violence constitutes a human rights issue. Although this principle may seem somewhat obvious, it should be remembered that it is only relatively recently that violence against women taking place in the home has been analysed in such a manner. A contributory factor to the delay in recognising domestic violence as being a human rights issue was the public/private dichotomy which existed historically in international human rights law. The public/private dichotomy may be formulated in several ways. Cook highlights two possibilities.¹⁸ Firstly, the public realm may be viewed as the area that is regulated by law and politics, and the private sphere as the area where regulation is seen as being inappropriate. Secondly, the public arena can be viewed as the state and its agents, while the private sphere is constituted by nonstate activities. In relation to the second interpretation of the public/private divide, international human rights law was originally designed in such a manner as to bind only states. Therefore abuses such as domestic violence, which take place between private individuals, did not come within the original ambit of human rights law. In addition, the rights norms that emerged were generally formulated in a very negative manner, whereby the state was required only to refrain from violating the rights in question. There were no obligations on the state to take positive steps to ensure that the rights of the individual were not breached. One implication of this was that the state was not required to protect the rights of the individual from violation by another private party, such as for example in a case of domestic violence. Nevertheless, principles such as state responsibility and due diligence have now been developed within human rights law, and the public/private dichotomy is being gradually eroded. Domestic violence is by no means the first issue breaking new ground in respect to involving the private sphere. In particular, the European Court of Human Rights has developed a mature body of case law on a wide range of issues which transcends the public/private divide.

In relation to violence against women in the home, although the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not make any explicit reference to domestic violence, it has nevertheless been interpreted in such a manner as to encompass this issue. General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) was extremely important as it officially interpreted CEDAW as prohibiting violence against women in both the public and private contexts. This Recommendation stated,

that discrimination under the Convention is not restricted to action by or on behalf of Governments...Under general international law and specific human rights covenants, States may be responsible for private acts if they fail to act with due

diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.¹⁹

The CEDAW Committee and other UN human rights bodies have now made numerous statements on the issue of domestic violence and have placed a broad range of obligations on states to take steps as regards this issue. These duties include improving the responses of the criminal justice system; ensuring that civil law measures are effective; implementing public awareness campaigns; providing educational programmes for certain professionals such as those working in health care; and, crucially, providing social support measures such as housing, refuge accommodation and child care facilities to victims. The European Court of Human Rights has also played a key role in the gradual erosion of the public/private dichotomy in human rights law through its creation of the doctrine of positive obligations. However, even after the development of such principles, it was not until 2007 that the issue of domestic violence was considered substantively by the European Court. Therefore every addition to the Court's jurisprudence on this issue is welcome in itself.

The fact that the Court in *Valiulienė* was not content simply to accept the unilateral declaration of the State that there had been a violation of Article 8, but no violation of Article 3 due to what the State termed 'the trivial nature' of the applicant's injuries²⁰ is also praiseworthy. This serves to emphasise that the Court views violence against women in the home as a serious matter and not one to be approached with the lack of gravity with which the State appeared to deal with the matter in the case in question.

Difficulties with the Court's approach.

However, there are also difficulties with the Court's approach in this case, some of which are highlighted in the Concurring Opinion of Judge Pinto de Albuquerque, who stated that although he voted for the operative part of the judgment, he could not subscribe to its motivation. Essentially he felt that the case 'raised fundamental legal issues which have not been dealt with properly by the majority',²¹ and that further explanation was needed regarding the application of the European Convention to cases involving domestic violence. In his Concurring Opinion, the Judge stated that,

the full *effet utile* of the European Convention on Human Rights...can only be achieved with a gender-sensitive interpretation and application of its provisions which takes in account the factual inequalities between women and men and the way they impact on women's lives. In that light, it is self-evident that the very act of domestic violence has an inherent humiliating and debasing character for the victim, which is exactly what the offender aims at. Physical pain is but one of the intended effects. A kick, a slap or a spit is also aimed at belittling the dignity of the partner, conveying a message of humiliation and degradation. It is precisely

this intrinsic element of humiliation that attracts the applicability of Article 3 of the Convention. The imputation of an Article 8 violation would fall short of the real and full meaning of violence in the domestic context, and would thus fail to qualify as a ‘gendered understanding of violence’.²²

The Judge then proceeded to discuss how the ‘*Osman* test’ should be applied in cases of domestic violence. This test was put forward by the European Court in *Osman v United Kingdom*²³ to determine when States have positive obligations to intervene to protect individuals from the acts of other private parties. Essentially the State has a duty to protect when the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to an identified individual or individuals from the criminal acts of a third party. In such circumstances the State authorities are under an obligation to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. However, the *Osman* test in its usual form is insufficient in cases involving domestic violence, as when there is an ‘immediate risk’ in such circumstances it is frequently too late for the State to intervene. As Judge Pinto de Albuquerque commented, ‘the recurrence and escalation inherent in most cases of domestic violence makes it somewhat artificial, even deleterious to require an immediacy of the risk. Even though the risk might not be imminent, it is already a serious risk when it is present.’²⁴

The Judge proceeded to suggest that a more rigorous standard of diligence than the traditional *Osman* test is especially necessary in the context of certain societies, such as that of Lithuania, which are faced with particularly long-lasting and widespread problems as regards domestic violence. A nation-wide study found that 42 percent of women in Lithuania who were aged between 18 and 74 and who had husbands or partners had been physically assaulted or threatened with physical assault by their current partners.²⁵ Lithuania became a party to CEDAW in January 1994. In July 2008 the CEDAW Committee issued its Concluding Observations on the latest report submitted by the State. In its Concluding Observations the Committee commented that it remained concerned at the high prevalence of violence against women in Lithuania, and in particular at the high levels of domestic violence. The Committee also expressed its concerns that this situation may lead to such violence being considered to be a private matter, whereby the issues involved may not be fully understood by the police, other relevant authorities and indeed Lithuanian society as a whole. The Committee therefore urged the State to ensure that comprehensive legal and other measures were in place to address all forms of violence against women, including domestic violence.²⁶ Judge Pinto de Albuquerque was thus of the view that the due diligence standard to be applied in cases involving domestic violence should be framed as,

If a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and fails to prevent harm from befalling the members of that group of people when they face a present (but not yet imminent) risk, the State can be found responsible by omission for the resulting human rights violations.²⁷

In addition, the majority judgment of the European Court in *Valiuliene v Lithuania* stated that it was not appropriate for the Court to speculate on the question of whether the applicant's criminal complaint should have been pursued by the public prosecutor or by way of a private prosecution. However, as Judge Pinto de Albuquerque pointed out,

in most cases, to place the victim of domestic violence in the unbearable quandary of having to decide for herself whether she wants to harm the family/intimate relationship through private prosecution is to perpetuate the subordinate position of the victim, and therefore, the violence itself, because she is evidently not in a position of freedom to make that choice due to her state of dependency on the offender.²⁸

The Judge then expressed the view that to require a victim of domestic violence to act as a private prosecutor is simply not compatible with the State's obligation to protect. It is submitted that the Judge is correct in his reasoning. It is widely recognised that for a victim of domestic violence, the decision even to make a statement to the police regarding the abuse she has suffered is frequently extremely difficult. There are a multitude of reasons why she may not wish to have the perpetrator prosecuted, such as a desire to keep the family together for the sake of children or the fact that she may be financially dependent on her abuser. Indeed, there has been a great deal of debate on the question of whether there are circumstances in which prosecutions should proceed even against the wishes of the victim. For example, the Crown Prosecution Service (CPS) in England and Wales adopts the approach that in some cases the abuse is so severe that the perpetrator must be prosecuted even without the victim's consent. In 2009 the CPS issued a policy document in which it states that, 'The views and interests of the victim are important, but they cannot be the final word on the subject of a CPS prosecution. Any future risks to the victim, their children or any other potential victim have to be taken into consideration.'²⁹ In any event, it is without doubt that victims of domestic violence should be given the highest possible levels of support throughout the prosecution process. It is submitted that the European Court should have made it clear in its judgment that requiring a victim of domestic violence to act as a private prosecutor is never compatible with the State's positive obligations under the Convention.

The Court's previous case law on domestic violence.

In a footnote to his Concurring Opinion, Judge Pinto de Albuquerque further stated that,

The majority missed the opportunity to set out a principled reasoning to impute a violation of Article 3, and not of Article 8, to the respondent State, preferring once again to remain attached to the particular specificities of the case. Yet that reasoning was much needed in view of the current disparate case-law...Moreover, having rejected the respondent Government's unilateral declaration, which acknowledged a violation of Article 8, the Court had an additional duty to provide a thorough reasoning of its finding of a violation of Article 3.³⁰

Essentially one of the main problems with the judgment of the European Court in *Valiuliene v Lithuania* is that the Court missed a key opportunity to clarify the rationale behind its use of Articles 3 and 8 in its jurisprudence on the issue of domestic violence. In cases involving violence against women in the home which come before the European Court, applicants usually seek to make arguments based upon Articles 3 and 8 and also, in some instances, Articles 2, 13 and 14 of the Convention. However, the approach of the Court as regards the Articles on which it bases its findings of violations of the Convention tends to be somewhat inconsistent and incoherent, particularly in relation to the use of Articles 3 and 8. In certain cases involving domestic violence, such as *Opuz v Turkey*³¹ and *E.S. and Others v Slovakia*,³² the Court has found breaches of Article 3. Nevertheless, there have equally been other cases, such as *Bevacqua and S v Bulgaria*,³³ *A v Croatia*³⁴ and *Kalucza v Hungary*,³⁵ in which the Court has found violations of Article 8 only and refrained from examining the cases under Article 3 also. In *Valiuliene v Lithuania* however, the Court did exactly the opposite and stated that it was not necessary to examine the complaint under Article 8, as it had already found a violation of Article 3. The difficulty is that the Court's reasoning for this difference in approach is not explained in its judgment.

On the facts of *Valiuliene v Lithuania*, there appears to be nothing to distinguish the violence suffered by the applicant from that which was experienced by the applicants in other cases involving domestic violence in which arguments were made in respect of *inter alia* Articles 3 and 8 and in which the Court based its findings on breaches of Article 8 only. For example, one of the seminal cases in the area of domestic violence is that of *Bevacqua and S v Bulgaria*.³⁶ The application in this case was submitted by the first applicant on her own behalf and also on behalf of her son S. The first applicant had married Mr N. in 1995 and given birth to S. in January 1997. However Mr N. became aggressive and on 1 March 2000 the first applicant left the family home with her son and moved into her parents' apartment. Nevertheless more instances of violence followed, and the injuries sustained by the first applicant included bruising of her eyelid, face, arm and hip and swelling of her cheek. It was alleged that the authorities had failed to protect

the first applicant against the violent behaviour of her former husband and had failed to take the necessary measures to secure respect for the family life of both applicants. It was therefore argued that the State had violated Articles 3, 8, 13 and 14 of the European Convention. It was also alleged that there had been a breach of Article 6, due to the excessive length of the custody proceedings surrounding the first applicant's son.

The Court examined the complaints under Article 8, but not under Articles 3, 13 or 14. In holding that there had been a violation of Article 8, the Court stated that,

At the relevant time Bulgarian law did not provide for specific administrative and policing measures (in relation to domestic violence) and the measures taken by the police and prosecuting authorities on the basis of their general powers did not prove effective...In the Court's view, the authorities' failure to impose sanctions or otherwise enforce Mr N.'s obligation to refrain from unlawful acts was critical in the circumstances of this case, as it amounted to a refusal to provide the immediate assistance the applicants needed. The authorities' view that no such assistance was due as the dispute concerned a 'private matter' was incompatible with their positive obligations to secure the enjoyment of the applicants' Article 8 rights.³⁷

The Court held that there had been no violation of Article 6 as the length of the custody proceedings had not been unreasonable. As regards the breach of Article 8, 4,000 euro was awarded in respect of non-pecuniary damage and 3,000 euro in respect of costs and expenses. In this case, the severity of the applicant's injuries seems to be fairly similar to that of the injuries of the applicant in *Valiuliene v Lithuania*, and the attacks were carried out over a longer period of time than in the *Valiuliene* case.

Likewise, in *A v Croatia*³⁸ the Court held that having found a violation of Article 8, there was no need to consider the case under Articles 2, 3 or 13, in respect of which the applicant had also alleged violations. In this case the applicant complained that the authorities had failed to protect her against the domestic violence of her ex-husband despite having been aware of his repeated physical and verbal assaults and death threats. The applicant's ex-husband suffered from severe mental disorders and, between November 2003 and June 2006, he had subjected the applicant to repeated violent behaviour. The violence was both physical, including kicking and hitting the applicant in the head, face and body, and also verbal, including making serious death threats against the applicant. Various proceedings were brought against the applicant's ex-husband in the national courts, and measures such as restraining orders, psychiatric or psycho-social treatment, and a prison term were ordered. However, only some of these orders were actually implemented. The applicant alleged that the authorities had failed to protect her adequately from domestic violence and argued that the State was thereby in violation of Articles 2, 3, 8, 13 and 14 of the European Convention.

The Court held that the authorities' failure to implement the measures ordered by the national courts, aimed both at addressing the psychiatric condition of the applicant's ex-husband and also at providing the applicant with protection against further violence, had left her for a prolonged period in a situation in which her right to respect for her private life under Article 8 of the Convention had been violated. However, having found a breach of Article 8, the Court stated that it was not necessary to examine the complaint under Articles 2, 3 or 13 also. The Court did however declare that the applicant's complaint of a violation of Article 14 was inadmissible, as she had not given sufficient evidence, such as reports or statistics, to establish that the measures and practices adopted by the State against domestic violence, or the effects of such measures or practices, were discriminatory. The applicant was awarded 9,000 euro in respect of non-pecuniary damage and 4,470 euro in respect of costs and expenses. Again, the violent attacks against the applicant in this case were carried out over a much longer period of time than were the attacks against the applicant in *Valiuliene*. Also, it seems that the injuries in question in *A v Croatia* were of a more severe nature. Why then was a violation of solely Article 8 found in *A v Croatia*, while the Court was so adamant that it was necessary to find a breach of Article 3 in *Valiuliene*?

The Court adopted the same approach as in *A v Croatia* in *Kalucza v Hungary*,³⁹ another case involving domestic violence in which the applicant argued that the State was in violation of Articles 2, 3, 8 and 13 of the Convention. Again the Court found a breach of Article 8 and then proceeded to state that as a consequence it was unnecessary to examine the case under Articles 2, 3 or 13. At the time of the Court's judgment in this case, the applicant was unwillingly sharing a flat with her violent ex-partner, Gy.B., pending the outcome of numerous civil disputes concerning the ownership of the flat. Following her divorce, the applicant had begun a relationship with Gy.B. in April 2005. At that time, she shared joint ownership of the flat with her ex-husband, however at the start of the relationship between the applicant and Gy.B., the latter decided to pay the ex-husband's share in the flat. Gy.B. officially acquired ownership of this share in January 2006 and the flat was registered as his place of residence in November 2006. The relationship between the applicant and Gy.B. ended around January 2007. Since then Gy.B. continued to stay in the flat against the applicant's wishes. The applicant requested the help of the relevant authorities on numerous occasions, and lodged criminal complaints against Gy.B. of rape, assault and harassment. On two occasions Gy.B. was found guilty of assault, released on parole and ordered to pay a fine. On three occasions the applicant herself was found guilty of disorderly conduct, assault and causing grievous bodily harm. The applicant made two requests for a restraining order to be brought against Gy.B. Her first request, which was made in June 2008, was dismissed by the courts in January 2010 on the ground that both parties were responsible for their bad relationship. Her second request was also dismissed for the same reason. Between

October 2005 and August 2010, 13 medical reports were drawn up which recorded contusions mostly to the applicant's head, face, chest and neck. The applicant argued that the State was in violation of Articles 2, 3, 8 and 13 of the European Convention, due to the failure of the authorities to protect her from constant physical and psychological abuse in her home.

In its judgment the European Court noted that it had taken the Hungarian authorities more than one and a half years to decide on the applicant's first request for a restraining order, despite the fact that the fundamental reason behind such a measure was to provide prompt protection to victims of violence. In addition, insufficient reasons had been given for the dismissal of the requests, the courts merely relying on the fact that both parties had been involved in assaults against the other. As the Court pointed out, if such an order could not be made in the event of a mutual assault, the possibility of the victim having acted in legitimate self-defence would be ruled out and the aim of providing effective protection to victims would be seriously undermined. The national courts had also failed to comply with their obligation to decide on the civil cases concerning the flat within a reasonable time. Even though the applicant had lodged criminal complaints against her partner for assault, had repeatedly requested that restraining orders be brought against him and had brought civil proceedings to order his eviction from the flat, the authorities had failed to adopt sufficient measures to secure the effective protection of the applicant. There had thus been a violation of Article 8 of the Convention. Having thereby found a breach of Article 8, the Court stated that it was thus unnecessary to examine the applicant's complaint under Articles 2, 3 or 13 also. The Court proceeded to award the applicant the sum of 5,150 euro in respect of non-pecuniary damage with regards to the violation of Article 8. Again the violence in question in this case was carried out over a much longer period of time than the abuse against the applicant in *Valiuliene* and the injuries suffered by the applicant in *Kalucza* appear, if anything, to be more severe than those sustained by the applicant in *Valiuliene*.

The question arises therefore of why did the Court adopt such an approach in *Bevacqua and S v Bulgaria*, *A v Croatia* and *Kalucza v Hungary*? There are at least two possible reasons for the Court's approach of finding violations of Article 8 and then omitting to consider Article 3, among other provisions of the Convention, in the cases discussed above. The first, and perhaps the less charitable explanation, is that in the past the Court may not have fully appreciated the seriousness of domestic violence, and therefore felt that it was more appropriate to deal with such cases as involving violations of the right to respect for private and family life, as opposed to the non-derogable right to be free from torture and inhuman or degrading treatment or punishment. However, it must be remembered that in certain cases prior to *Valiuliene v Lithuania*, such as *Opuz v Turkey*⁴⁰ and *E.S. and Others v Slovakia*,⁴¹ the Court did find violations of Article 3 in

cases involving domestic violence. It seems therefore that this explanation is less than satisfactory.

The second possible reason, and perhaps the more likely explanation of the Court's previous approach, relates purely to the issue of practicality. It is a well-known fact that the European Court is currently burdened with a case load which stretches its resources to breaking point and beyond. That being the situation, for reasons of expediency, the Court frequently takes the approach of finding a violation of one Article of the Convention and then omitting to consider the application of other Articles on which arguments have been made by applicants. This approach is adopted by the Court in many types of cases, and is by no means limited to cases involving domestic violence. The fact that in cases involving violence against women in the home, the Court has frequently seemed to display a preference for the use of Article 8 over that of Article 3 may simply be due to the fact that it can be somewhat easier to establish a breach of Article 8 than it is to establish a violation of Article 3. If this is the reason behind the Court's approach, it is difficult to be unsympathetic to the Court, given the enormous pressure under which it works in terms of its huge caseload. Nevertheless, it could be argued that by addressing all the articles relied upon by an applicant, the Court could produce clearer overall guidance which may in turn enable states to apply the Convention more consistently at the domestic level, thereby reducing the number of applications being lodged at Strasbourg. Also, if the reason for the Court's current approach is purely that of expediency, the difficulty is that such an approach may be interpreted as being based on principle, with that principle being that domestic violence is only serious enough to fall within Article 8, but does not in the majority of cases meet the threshold of constituting a violation of Article 3. This is problematic, to say the least. Indeed there is evidence in the case of *Valiuliene v Lithuania* itself that the practice of the Court was being interpreted in this manner. In his Dissenting Opinion in the case, Judge Jociene stated that he was of the opinion that 'the Court has incorrectly relied on Article 3 in the circumstances of the present case' and that 'This position of the Chamber is not supported by the Court's case-law, where domestic violence cases are mostly examined from the perspective of Article 8 of the Convention.'⁴² Judge Jociene went on to say that, 'Accordingly, and referring to the Court's case-law on the subject...the applicant's complaint in connection with the physical attacks on her should have been examined under Article 8 of the Convention and the applicant's right to respect for her private life.'⁴³ It is clear therefore that Judge Jociene was of the view that the general practice of the Court was to use Article 8 in cases of domestic violence, as opposed to Article 3, and that this approach was grounded on principle as opposed to being based purely on practical considerations. Equally, in accepting that there had been a breach of Article 8 in the case but not a violation of Article 3, it is not inconceivable that the State may have consulted the Court's previous case law on domestic violence and concluded that it was

probable that a violation of Article 8 would be found, and that the case would not be analysed under Article 3. The fact that the State seemed to be of the view that abuse constituting a violation of Article 8 could still be described as resulting in injuries that are ‘merely trivial’ in nature is troubling, and raises concerns over the message which the Court’s use of Article 8 in cases of domestic violence has sent out to States.

Why did the Court adopt a different approach in *Valiuliene v Lithuania*?

Whatever the reason for the Court’s approach in its previous case law involving domestic violence, the question arises of why a different approach was adopted in *Valiuliene v Lithuania*. In this instance, the Court again limited its consideration to one Article of the Convention, however this time it chose Article 3 as opposed to Article 8 as the provision to be applied. However, why was the Court so adamant that a violation of Article 3 had been established in this particular instance? As discussed above, on the facts of the case, there appears to be nothing to distinguish the violence suffered by the applicant from that experienced by the applicants in other cases involving domestic violence in which the Court had based its judgments on Article 8, in terms of the intensity of the abuse or the severity of the injuries sustained. Indeed the Court itself does not seem to have viewed the violence sustained by the applicant in *Valiuliene* as more severe than that suffered by the applicants in the cases involving violence against women in the home discussed above, as seen in the levels of compensation for non-pecuniary damage awarded by the Court in these cases. In *Valiuliene* the Court awarded the applicant 5,000 euro for non-pecuniary damage in respect of the breach of Article 3. In *Bevacqua, A v Croatia* and *Kalucza* the applicants were awarded 4,000 euro, 9,000 euro and 5,150 euro respectively for non-pecuniary damage as regards the violations of Article 8. The level of non-pecuniary damage awarded in *Valiuliene* is therefore lower than that which was awarded in *Kalucza* and significantly lower than that which was awarded in *A v Croatia*.

It seems that the most likely explanation of the change in approach on the part of the Court as regards *Valiuliene v Lithuania* lies with the actions of the State in question in submitting the unilateral declaration accepting that there had been a violation of Article 8, but stating that there had been no breach of Article 3. It must be remembered that in the cases involving domestic violence in which the Court found a violation of Article 8 and then omitted to examine Article 3, it was by no means saying that a breach of Article 3 could not be substantiated. It was merely stating that having found a violation of the Convention in respect of one Article, it was unnecessary to examine the case under any other provisions of the Convention. If however the Court had simply accepted the State’s unilateral declaration of a breach of Article 8 in *Valiuliene v Lithuania* without further examination it would, implicitly at least, be accepting that there had been no violation of Article 3 in this instance. It seems that such an outcome was not desired by the Court.

Indeed not only did the Court refuse to accept the State's unilateral declaration, but it also proceeded to make findings in its judgment that were in a sense the exact opposite of what the State had asserted in its unilateral declaration. Instead of agreeing that there was a violation of Article 8, but not of Article 3, the Court held that there was a breach of Article 3 and that it was not therefore necessary to examine whether there had been a violation of Article 8 also.

It appears likely that the Court's approach in *Valiuliene v Lithuania* was influenced to a large extent by the attitude which the State seemed to exhibit in making its unilateral declaration. In making the declaration the State claimed that although it accepted that there had been a violation of Article 8, there had been no violation of Article 3 due to what it termed 'the trivial nature' of the applicant's injuries⁴⁴. It appeared that the State was therefore minimising the seriousness of what was, even on its own admission, a human rights violation. As the Court itself pointed out, in assessing the minimum level of severity of abuse needed to fall within the scope of Article 3, all the circumstances of the case must be taken into consideration, including 'the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.'⁴⁵ In claiming that there had been no violation of Article 3, the State had failed to take into account the particular circumstances which surround situations involving domestic violence, in particular the psychological impact which such abuse has on the victim. The Court may well have wished to distance itself from the views of the State in this regard, and the most effective way of doing so was arguably to find a violation of Article 3 only and hold that it was therefore unnecessary to examine the applicability of Article 8.

It is interesting to speculate on the question of what approach the Court would have adopted in this case had the State not submitted its unilateral declaration. It is of course impossible to know how the Court would have responded in the absence of such a declaration, and so this question can only ever be a matter of conjecture. Nevertheless, given the Court's history in dealing with cases involving domestic violence, it is not inconceivable that the Court would have adopted a similar approach to its judgments in *Bevacqua and S v Bulgaria*,⁴⁶ *A v Croatia*⁴⁷ and *Kalucza v Hungary*,⁴⁸ in which the Court found violations of Article 8 and then stated that it was not necessary to examine the cases under Article 3 also. If the Court had adopted such an approach in *Valiuliene v Lithuania*, it is unlikely that it would have done so with the intention of implying that the abuse in question was insufficient to amount to a violation of Article 3, or that the situation was less serious than a finding of a breach of Article 3 would have inferred. Nevertheless, in making its unilateral declaration the State seemed to be of the view that being found in violation of Article 8 would be a less serious matter than being found to be in breach of Article 3. The State may therefore have 'shot itself in the foot', so to

speak, by making its unilateral declaration in this case. In doing so, it is possible that the State actually spurred the Court into finding a violation of Article 3 in order to emphasise the seriousness of violence against women in the home.

As discussed above and as pointed out by Judge Pinto de Albuquerque in his Concurring Opinion, one of the difficulties with the Court's judgment in *Valiuliene v Lithuania* is that the Court failed to set out a principled rationale for its use of the various Convention provisions, particularly Articles 3 and 8, as bases for finding violations in cases involving domestic violence. However, it is likely that one of the main reasons for the Court's omission in this respect is that in reality it is impossible to rationalise the somewhat haphazard case law in any kind of reasoned manner. As discussed above, there seems to be no explanation in principle as to why Article 8 violations were found in *Bevacqua and S v Bulgaria*,⁴⁹ *A v Croatia*⁵⁰ and *Kalucz v Hungary*,⁵¹ while the finding of a breach of Article 8 was insufficient in *Valiuliene v Lithuania*, as demonstrated by the Court's refusal to accept the State's unilateral declaration in this regard. Indeed it seems likely that the reasoning behind the findings of violations of Article 8 only was purely a matter of expediency. In the absence of a principled rationale for its approach, there is in reality no explanation that can be given by the Court. Nevertheless, this should not detract from the merits of the Court's resolute attitude in *Valiuliene v Lithuania*. It is much to the Court's credit that it did not accept the State's unilateral declaration and instead chose to examine the case under Article 3 only, even though such a course of action constituted a departure from its previous jurisprudence.

It is interesting to note that in adopting such a resolute approach to the issue of domestic violence in this case, the Court may have been partly influenced by the adoption by the Council of Europe of the Convention on Violence against Women and Domestic Violence. Indeed this Convention is mentioned by the Court in its judgment.⁵² The Convention has currently been signed by 32 States of the Council of Europe, with eight ratifications. Although it has not yet entered into force as ten ratifications are necessary before it can do so, the Convention nevertheless contains very detailed provisions on the responses which States should adopt as regards the issue of domestic violence. It is possible that the adoption of this Convention by the Council of Europe may well have influenced the approach taken by the European Court in the present case, for example, it was noted by the Court that Lithuania was not yet a signatory to the Convention.⁵³

One final observation regarding the Court's approach in *Valiuliene v Lithuania* relates to the amount of damages awarded in the case. The applicant had claimed 20,000 euro in respect of non-pecuniary damage, however the Court viewed this amount as excessive and instead awarded the applicant 5,000 euro. Judge Jociene, who wrote a Dissenting Opinion, was of the view that as the case had been examined under Article 3,

the amount of compensation awarded to the applicant should have been increased in order to reflect a finding of a violation of Article 3. This is a very interesting statement indeed, given the fact that Judge Jociene was of the opinion that the case should have been examined exclusively under Article 8 and that the State's unilateral declaration should have been accepted. Also, as Judge Jociene is the Lithuanian judge, he was essentially making the point that an increased level of damages should have been awarded against his own State, given that a violation of Article 3 had been found. Although the level of compensation awarded in *Valiuliene v Lithuania* is broadly in line with amounts awarded by the Court in other cases involving domestic violence, it could be argued that larger amounts of compensation should be awarded by the Court in cases involving violence against women in the home in view of the very serious impact which such abuse frequently has on the victim.

Conclusion.

In conclusion, it could perhaps be argued that to an individual applicant the crucial issue of concern is whether the European Court of Human Rights finds a violation of the Convention in his or her case, and the question of whether the violation is of Article 3 or of Article 8 is of no great significance. This argument is indeed valid to a certain extent. If the Court finds a violation of any Article of the Convention and awards compensation to the applicant, it is likely that the applicant will feel vindicated, at least to some degree. In a footnote to his Concurring Opinion, Judge Pinto de Albuquerque commented that the issue of on which Articles the Court bases its findings is 'obviously not irrelevant, for compensation and other purposes.'⁵⁴ However, as discussed above, it seems that, at least in domestic violence cases, the question of on which Article the Court grounds its finding of a violation makes no difference to the amount of compensation awarded to the individual applicant. Nevertheless, the significance of this issue stretches beyond the issue of compensation. It is arguable that a finding on the part of the European Court of Human Rights that domestic violence constitutes a violation of the non-derogable right to be free from torture and inhuman or degrading treatment or punishment sends out a stronger message to States regarding the seriousness with which the Court regards this issue than does a finding that domestic violence breaches the right to respect for private and family life. Indeed, in rejecting the State's unilateral declaration of a violation of Article 8 in *Valiuliene*, the Court seemed to realise this to be the case.

The decision of the European Court in *Valiuliene v Lithuania* certainly represents an extremely interesting addition to the Court's jurisprudence on the subject of domestic violence. However, even more interesting is the question of how the Court will further develop its case law in this area in the wake of the case. Will the Court continue to use

Article 3 as the primary basis for its decisions, or will it revert to the frequent use of Article 8 which seemed to characterise its previous case law on this subject? Some indication of the answer to this question may be found in the case of *Eremia and Others v the Republic of Moldova*,⁵⁵ in respect of which the European Court issued its judgment on 28 May 2013. This case concerned a complaint by Ms Eremia and her two daughters that their Articles 3 and 14 rights had been violated due to the failure of the Moldovan authorities to protect them from the violent and abusive behaviour of their husband and father, who was a police officer. The Court held that, despite their knowledge of the abuse, the authorities had failed to take effective measures against Ms Eremia's husband, and had failed to protect Ms Eremia from further domestic violence. There had thus been a violation of Article 3 in respect of Ms Eremia. In addition, the Court found that the authorities' attitude had amounted to condoning violence and had been discriminatory towards Ms Eremia as a woman. There had therefore been a violation of Article 14 read in conjunction with Article 3. The alleged violations of the rights of the two daughters related not to physical violence inflicted upon them, but to verbal abuse and to the detrimental psychological effects of witnessing their father's violence against their mother in the family home. Although they had alleged a breach of Article 3, the Court held that Article 8 was the more appropriate provision under which to examine their complaints, and proceeded to find a violation of this provision. The Court in this case made no reference to its decision in *Valiuliene v Lithuania*, however it is nonetheless notable that the Court found a violation of Article 3. Although the Court decided that the complaints of Ms Eremia's daughters should be considered under Article 8 as opposed to Article 3, there was no question of such an approach being adopted as regards the violence suffered by Ms Eremia herself. Nevertheless, it should be noted that the arguments made were based only on Articles 3 and 14 (and not Article 8) in respect of this violence.

Arguably, it seems that in domestic violence cases in which both Articles 3 and 8 are relied upon, in the light of *Valiuliene* it will be necessary for the Court to examine such cases under Article 3 instead of simply finding a violation of Article 8 and then stating that it is unnecessary to examine the case under Article 3 also. It appears that to do otherwise would leave the Court open to allegations of inconsistency, given its approach to the State's admission of a breach of Article 8 in *Valiuliene*. Indeed, due to the widespread and deplorable nature of domestic violence, it would surely be reasonable for the Court to indicate clearly that all future applications connected to this issue will be considered under Article 3 first and foremost and only then under other articles. If this approach were adopted by the Court, the next development in the domestic violence context may be the question of whether domestic violence should be regarded as inhuman or degrading treatment, or as torture. In none of the cases involving domestic violence in which breaches of Article 3 have been found has the Court stated that the treatment in

question amounts to torture. However, a number of commentators have likened domestic violence to torture.⁵⁶ In certain cases, such as *Ireland v United Kingdom*,⁵⁷ a State has tried (unsuccessfully) to admit to inhuman and degrading treatment in the hope that the Court will not then consider whether the ill-treatment in question actually amounted to torture. It is possible that a State may attempt to make such an argument in a case involving domestic violence, and that a definitive ruling on this issue may constitute the next development in the European Court's jurisprudence in this area.

References.

¹ Application no. 33234/07, 26 March 2013.

² Ibid., at para. 55.

³ Ibid., at para. 61.

⁴ Ibid., at para. 65.

⁵ Ibid., at para. 66.

⁶ Ibid., at para. 69.

⁷ Ibid., at para. 69.

⁸ Ibid., at para. 70.

⁹ Ibid., at para. 73.

¹⁰ Ibid., at para. 74.

¹¹ Ibid., at para. 75.

¹² Ibid., at para. 75.

¹³ Ibid., at para. 82.

¹⁴ Ibid., at para. 85.

¹⁵ Ibid., at para. 85.

¹⁶ Ibid., at para. 85.

¹⁷ Ibid., at para. 86.

¹⁸ Rebecca Cook, 'Women's International Human Rights Law: The Way Forward', in ed. Rebecca Cook, *Human Rights of Women – National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994) 3-36 at 6.

¹⁹ General Recommendation No.19, on Violence against Women (1992) at para. 9.

²⁰ Note 1, at para. 55.

²¹ Note 1, Concurring Opinion of Judge Pinto de Albuquerque.

²² Ibid.

²³ Application no. 23452/94, 28 October 1998, at para. 116.

²⁴ Note 1, Concurring Opinion of Judge Pinto de Albuquerque.

²⁵ UN General Assembly, *In-depth study on all forms of violence against women: report of the Secretary-General*, 6 July 2006, A/61/122/Add.1, available at: <http://www.unhcr.org/refworld/docid/484e58702.html>

²⁶ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lithuania, 8 July 2008, CEDAW/C/LTU/CO/4, at paras. 74 and 75.

²⁷ Note 1, Concurring Opinion of Judge Pinto de Albuquerque.

²⁸ Ibid.

²⁹ Crown Prosecution Service, 'CPS Policy for Prosecuting Cases of Domestic Violence', 2009, at para. 4.6.

³⁰ Note 1, at footnote 18 of the Concurring Opinion of Judge Pinto de Albuquerque.

³¹ Application no. 33401/02, 9 September 2009. The Court also found violations of Articles 2 and 14 in this case.

³² Application no. 8227/04, 15 December 2009. The Court also found a violation of Article 8 in this case.

³³ Application no. 71127/01, 12 September 2008.

³⁴ Application no. 55164/08, 14 October 2010.

³⁵ Application no. 57693/10, 24 April 2012.

³⁶ Note 34.

³⁷ Note 34, at para. 83.

³⁸ Note 35.

³⁹ Note 36.

⁴⁰ Note 32.

⁴¹ Note 33.

⁴² Note 1, at para. 10 of the Dissenting Judgment of Judge Jociene.

⁴³ Note 1, at para. 11 of the Dissenting Judgment of Judge Jociene.

⁴⁴ Note 1, at para. 55.

⁴⁵ Note 1, at para. 65.

⁴⁶ Note 34.

⁴⁷ Note 35.

⁴⁸ Note 36.

⁴⁹ Note 34.

⁵⁰ Note 35.

⁵¹ Note 36.

⁵² Note 1, at para. 41.

⁵³ Ibid. Interestingly, Lithuania signed the Convention on Preventing and Combating Violence against Women and Domestic Violence on 7 June 2013, less than three months after the issuing of the European Court's judgment in *Valiuliene*.

⁵⁴ Note 1, at footnote 18 of the Concurring Opinion of Judge Pinto de Albuquerque.

⁵⁵ Application no. 3564/11, 28 May 2013.

⁵⁶ For example, Rhonda Copelon, 'Intimate Terror: Understanding Domestic Violence as Torture', in ed. Rebecca Cook, *Human Rights of Women – National and International Perspectives*, (Philadelphia: University of Pennsylvania Press, 1994) 116-152; Ela Grdinic, 'Application of the Elements of Torture and Other Forms of Ill-Treatment, as Defined by the European Court and Commission of Human Rights, to the Incidents of Domestic Violence', (2000) 23 *Hastings International and Comparative Law Review*, 217-260.

⁵⁷ Application no. 5310/71, 18 January 1978.